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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 563

VALENTINE & SONS, A COPARTNERSHIP, A. L. RUSSO &
CO., GEORGE COPRIVIZA & SON, COX & WAUGA-
MAN, PAPAC-NIRICH COMPANY AND MATIASSE-
VICH BROS.,

vs.

Petitioners,

CHESTER BOWLES, PRICE ADMINISTRATOR

BRIEF IN SUPPORT OF PETITION

This honorable Supreme Court has jurisdiction to review the judgment and decree in question by reason of the provisions of the Emergency Price Control Act of 1942 found in 1943 Cumulative Annual Pocket Part of Title 50 U. S. C. A. Annotated, section 924d, page 327, which provides as follows:

“Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be sub-

ject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as provided in section 240 of the Judicial Code, as amended (U. S. C., 1934 edition, title 28, sec. 347). The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2 (section 902 of this Appendix), of any price schedule effective in accordance with the provisions of section 206 (section 926 of this Appendix) and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision. Jan. 30, 1942, c. 26, Title II, section 204, 56 Stat. 31."

The said decree of the United States Emergency Court of Appeals was rendered on September 26, 1945.

The grounds upon which the petitioners rely are as follows:

- (a) The OPA acted in violation of authority as set forth by Congress;
- (b) The OPA had no jurisdiction over the subject matter, the complainants, the industry, the product, or the area involved herein;
- (c) The jurisdiction over the subject matter, the person, the industry and the area involved herein rested

with the War Production Board and the War Food Administration and was so conducted by these Boards;

(d) The OPA in attempting to regulate the industry usurped the powers of the War Production Board and the War Food Administration, and therefore its actions were illegal and unconstitutional;

(e) The action of the O. P. A. was unconstitutional;

(f) The action of the OPA was confiscatory;

(g) The action of the OPA is admittedly based upon incomplete review of the price structure of the industry without notice, hearing or consultation as required by the Emergency Price Control Act;

(h) The regulations made by the OPA setting the price at \$110 per dried ton is in direct conflict with the actual facts in refusing to allow a return on interest, capital investment or upon the labor of one who employs another;

(i) The said order setting the price at \$110 not only refuses a return on capital investment, or a profit, but is actually confiscatory in that it refuses even the actual expenditures; that the action of the OPA in this instance was lacking in due process of law in violation of the fifth amendment to the Constitution of the Constitution of the United States;

(j) That the theory upon which the OPA has acted in this instance is a theory contrary to the guarantees expressed in the Constitution of the United States; that the said theory employed by the OPA disregards actual costs and states that it is proper for it to distribute the money of one person to another stranger without the consent of the person affected—in this instance the complainants, and without notice, hearing of consultation;

(k) That the said order of the OPA is in direct violation of the express contracts and impaired the obligation of the contracts.

(l) That the action of the OPA in its ruling of March 27, 1944, disregarding the Cox & Waugaman dryer's charges and the Papac-Niric charges is confiscatory and unconstitutional; that the said price is admittedly based on a refusal to regard repairs and maintenance of the plants of complainants and is unconstitutional;

(m) That the said price as establish by the OPA was not based on that of a competitive dryer of the complainants and that the said OPA had no power by regulation over the complainants on their services in this section.

The case is one regulating the charges for services rendered by the petitioners for dehydrating apples and which services the Price Administrator attempted to regulate by an order issued on April 1, 1943, under a claimed power or jurisdiction delegated to him by the Congress of the United States in the Emergency Price Control Act of 1942 and which unconstitutionally and confiscatory powers the United States Emergency Court of Appeals upheld and sustained in its opinion, judgment and decree of September 26, 1945.

Dated: San Francisco, California, this 25th day of October, 1945.

CAREY VAN FLEET,
EMMETT R. BURNS,
Counsel for Petitioners.

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